

INSURANCE DIVISION[191]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 508E.19, the Insurance Division hereby amends Chapter 48, “Viatical and Life Settlements,” Iowa Administrative Code.

The rules in Chapter 48 provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made and safeguards by which viatical settlement providers may be monitored and remain in good standing. The amendments provide technical corrections to conform the rules to the Iowa Code. The Division intends that Iowa viatical settlement brokers and providers will comply with these rules for all viatical settlement purchase agreements issued on or after April 3, 2009.

In compliance with Iowa Code section 17A.4(3), the Division finds that notice and public participation are unnecessary because the amendments are merely corrections of inconsistencies within the rules. Further, the amendments adopted herein are necessary for the administration of the rules.

The Division also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments, 35 days after publication, should be waived and these amendments should be made effective on April 3, 2009, because the corrections need to be in place immediately to avoid confusion.

The Insurance Division adopted these amendments on April 3, 2009.

These amendments became effective on April 3, 2009.

These amendments are intended to implement Iowa Code chapters 508E, 252J, 261 and 272D.

The following amendments are adopted.

ITEM 1. Amend rule 191—48.1(508E) as follows:

191—48.1(508E) Purpose and authority. The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392.~~

ITEM 2. Amend rule 191—48.2(508E), introductory paragraph, as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392,~~ are incorporated by reference. In addition, the following definitions shall apply:

ITEM 3. Amend rule 191—48.3(508E) as follows:

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider.

a. To be considered for licensure as a viatical settlement provider, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, a person must complete the viatical settlement provider application form, ~~to be found at the commissioner’s Web site,~~ file with the commissioner the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, the applicant also shall provide the following:

(1) and (2) No change.

(3) If a legal entity intending to have any partners, officers, members, and designated employees act as viatical settlement providers or viatical settlement brokers under the legal entity’s license, pursuant

to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, all completed forms, fees, and information required to be filed under subrule 48.3(2) for each such person named in the application and any supplements to the application;

(4) and (5) No change.

(6) Initial viatical settlement contracts, ~~and disclosure statements, and advertising material~~ that have been or are being submitted for approval and that have been approved or that are approved during the course of the application process pursuant to Iowa Code section 508E.5;

(7) and (8) No change.

b. A form for the antifraud plan that is required to be submitted with an application, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 15~~ Iowa Code section 508E.15, can be found on the commissioner's Web site.

c. No change.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule and Iowa Code subsection 508E.3(7).

48.3(2) Viatical settlement broker.

a. To be considered for licensure as a viatical settlement broker, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, a person must complete the viatical settlement broker application form, ~~to be found at the commissioner's Web site,~~ file the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. In addition to finding compliance with ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, the commissioner also shall find that the applicant:

~~(1) Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;~~

(1) Has provided proof of one of the following:

1. The applicant is a licensed insurance producer with a life line of authority for at least the 12 months preceding the date of application; or

2. The applicant has taken and passed an examination on viatical and life settlement contracts required by another state insurance department and currently holds a license as a viatical settlement broker from that state; or

3. The applicant has passed the viatical settlement examination required by the commissioner. Examination results are valid for 90 days after the date of the examination. If the applicant fails to apply for licensure within 90 days after passing the examination, the examination results shall be void;

(2) and (3) No change.

~~b. — If a person is a life insurance producer who meets the requirements of 2008 Iowa Acts, Senate File 2392, section 3, the requirements of paragraph 48.3(2) "a" shall be deemed to have been met, and the life insurance producer shall file a form, to be found at the commissioner's Web site, and shall include the payment of \$100. The one year that a life insurance producer must be licensed to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, shall immediately precede the producer's request for a viatical settlement broker license.~~

~~c.~~ b. A form for the antifraud plan that is required to be submitted with an application, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 15~~ Iowa Code section 508E.15, can be found on the commissioner's Web site.

~~d.~~ c. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule and has made a filing pursuant to Iowa Code subsection 508E.3(7).

48.3(3) Governing law where viators are residents of different states. For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest

percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a statute or rule substantially similar to Iowa Code chapter 508E ~~as amended by 2008 Iowa Acts, Senate File 2392~~, and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

48.3(4) License term.

a. and b. No change.

c. A viatical settlement broker license is valid for an initial term of one year from the last day of the applicant's ~~birth~~ anniversary month following the issuance of the license, and automatically terminates on the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. and e. No change.

48.3(5) Continuing education for viatical settlement broker.

a. to i. No change.

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination within 90 days prior to the date on which the renewal application is submitted.

k. to m. No change.

48.3(6) License renewal. A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 within 60 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1) "a"(4), has provided business character reports for any new persons listed in subparagraph 48.3(1) "a"(4), and has provided the reports required by rule 48.7(508E).

(1) and (2) No change.

b. No change.

c. If a legal entity has any partners, officers, members, or designated employees acting as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to ~~2008 Iowa Acts, Senate File 2392, section 3~~ Iowa Code section 508E.3, the legal entity must provide all completed forms, fees, and information required to be filed under paragraphs 48.3(6) "a" and "b" for each such person named in the application, or in any supplements to the application, and must provide any deletions to the list of names that was provided with the original application. If there are any new partners, officers, members, and designated employees that the legal entity intends will act as viatical settlement providers or viatical settlement brokers under the legal entity's license, the legal entity shall provide for each such person the forms, information and fees required by subrule 48.3(2).

d. If a viatical settlement provider or viatical settlement broker fails to comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of ~~2008 Iowa Acts, Senate File 2392, section 3~~, Iowa Code section 508E.3 and subrule 48.3(1) or to submit the reports required in rule 48.7(508E), such nonpayment or failure shall result in lapse of the license.

e. No change.

48.3(7) No change.

48.3(8) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

a. to c. No change.

d. An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E ~~amended by 2008 Iowa Acts, Senate File 2392~~. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

e. No change.

f. A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner's designee with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

g. No change.

48.3(9) to 48.3(11) No change.

48.3(12) Fees.

a. Fees shall be paid by check.

b. The fee for an examination shall be set by the outside testing service under contract with the division and approved by the division.

c. The annual fee for issuance or renewal of a viatical broker, legal entity or provider license is \$100.

d. The fee for reinstatement of a viatical broker, legal entity or provider license is the sum of the renewal fee plus \$100.

e. The division may charge a reasonable fee for the compilation and production of viatical broker, legal entity or provider licensing records.

ITEM 4. Amend subrule 48.7(1), introductory paragraph, as follows:

48.7(1) On March 1 of each calendar year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall submit, under oath, the following: the annual statement required by ~~2008 Iowa Acts, Senate File 2392, section 6~~ Iowa Code section 508E.6; a report of all viatical settlement transactions in which the viator is a resident of this state; and a report for all states in the aggregate. The report shall contain the following information for the previous calendar year:

ITEM 5. Amend rule 191—48.8(508E) as follows:

191—48.8(508E) Examination or investigations.

48.8(1) Authority, scope and scheduling of examinations. In addition to the authority, scope and scheduling of examinations set forth in ~~2008 Iowa Acts, Senate File 2392, section 7~~ Iowa Code section 508E.7, the following provisions shall apply:

a. to c. No change.

48.8(2) Immunity from liability. No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

ITEM 6. Amend rule 191—48.10(508E) as follows:

191—48.10(508E) Penalties; injunctions; civil remedies; cease and desist.

48.10(1) Unfair trade practices. Pursuant to ~~2008 Iowa Acts, Senate File 2392, section 17~~ Iowa Code section 508E.17, a violation of rule 48.4(508E), 48.5(508E), 48.6(508E), 48.7(508E) or 48.9(508E) shall be considered an unfair trade practice under Iowa Code chapter 507B, and a violator shall be subject to the penalties contained in that chapter.

48.10(2) and 48.10(3) No change.

48.10(4) A viatical settlement provider licensed in this state that in the time required fails to file either the annual statement referred to in ~~2008 Iowa Acts, Senate File 2392, section 6~~ Iowa Code section 508E.6 or the annual audited financial statement referred to in subparagraph 48.3(1) "a"(1), ~~in the time required~~ shall pay an administrative penalty pursuant to ~~2008 Iowa Acts, Senate File 2392, section 16~~ Iowa Code section 508E.16. The viatical settlement provider's right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.

48.10(5) Pursuant to ~~2008 Iowa Acts, Senate File 2392, section 16~~ Iowa Code section 508E.16, if the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to 191—Chapters 2 and 3.

ITEM 7. Amend rule 191—48.13(82GA,SF2428) as follows:

191—48.13(~~82GA,SF2428~~ 272D) Suspension for failure to pay state debt.

48.13(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D. In addition to the procedures set forth in ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D, this rule shall apply.

48.13(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.13(3) Pursuant to ~~2008 Iowa Acts, Senate File 2428, section 14~~ Iowa Code section 272D.8, the notice shall contain the following items:

a. to c. No change.

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to ~~2008 Iowa Acts, Senate File 2428, section 15~~ Iowa Code section 272D.9;

e. and f. No change.

48.13(4) Viatical settlement brokers shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue under or in connection with ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D; and viatical settlement brokers shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to ~~2008 Iowa Acts, Senate File 2428, section 15~~ Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

48.13(5) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by ~~2008 Iowa Acts, Senate File 2428, section 14~~, Iowa Code section 272D.8 and subrule 48.13(2), shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.13(6) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to ~~2008 Iowa Acts, Senate File 2428, section 15~~ Iowa Code section 272D.9, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.13(7) No change.

48.13(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D.

48.13(9) No change.

48.13(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying viatical settlement brokers subject to enforcement under ~~2008 Iowa Acts, Senate File 2428~~ Iowa Code chapter 272D.

ITEM 8. Amend **191—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter chapters~~ 508E, as amended by ~~2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J, and 261; and 2008 Iowa Acts, Senate File 2428~~ 272D.

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